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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Elena White, et al.,

10 Plaintiffs,

11 vs.

12 United States of America, et al.,

13 Defendants.
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) NO. CIV 03-1823-PCT-RCB
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15 **SETTLEMENT CONFERENCE ORDER**

16 This case has been referred to United States Magistrate Judge David K. Duncan for a
17 Settlement Conference.

18 The purpose of the Settlement Conference is to facilitate settlement of this case, if that
19 is appropriate. It will be conducted in such a manner as not to prejudice any party in the event
20 settlement is not reached. To that end, all matters communicated to the undersigned expressly
21 in confidence will be kept confidential, and will not be disclosed to any other party. Rule 408,
22 Federal Rules of Evidence, applies to all aspects of the Settlement Conference. All
23 communications and information exchanges made in the settlement process, not otherwise
24 discoverable, will not be admissible in evidence for any purpose, and shall not be used for any
25 purpose outside the settlement process itself. At the conclusion of the Settlement Conference,
26 all documents submitted by the parties shall be returned, destroyed, or otherwise disposed of
27 in the manner directed by the settlement judge.
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1 At the Settlement Conference and subject to modification by the Court depending on the
2 uniqueness of each case, each party, through counsel or individually if unrepresented, may be
3 asked to give a brief presentation outlining the factual and legal highlights of that party's case
4 and may be asked general and specific questions by the Court. Thereafter, separate and private
5 caucuses will be held with each party, the party's representative and the settlement judge.

6 This Order mandating the parties', representatives', and insurers' physical appearance
7 is intended to increase the efficiency and effectiveness of the Settlement Conference by
8 reducing the time for communication of offers and expanding the ability to explore the varied
9 options for settlement; to give the adverse parties the opportunity to hear the rationale and
10 arguments regarding the likelihood of success of the claims/defenses directly from the lawyers
11 who will be trying the case; to meet the litigants and representatives themselves; and to hear
12 first-hand the candid, objective comments by a neutral settlement judge regarding the case or
13 the judicial process.

14 Experience has taught the undersigned that the physical presence, rather than the
15 availability by telephone, and participation of those individuals with the authority to settle cases
16 will substantially increase the likelihood of settlement and will lead to more meaningful
17 negotiations. Consequently, and pursuant to the authority granted to the Court in 28 U.S.C. §
18 473(b)(5), representatives of the parties with full, complete, and unlimited authority to discuss
19 and settle the case shall be physically present unless expressly excused by the undersigned by
20 formal motion and order issued prior to the subject settlement conference for good cause shown.

21 Accordingly,

22 Pursuant to Rule 16, Federal Rules of Civil Procedure, and 28 U.S.C. § 473(b)(5),

23 **IT IS ORDERED** that:

24 1. All parties and their counsel who are responsible for trial of this case **SHALL**
25 physically appear before the undersigned settlement judge, Courtroom 305, Sandra Day
26 O'Connor U. S. Courthouse, 401 West Washington Street, Phoenix, Arizona on **Friday, July**
27 **21, 2006, at 9:00 a.m.**

1 If a Defendant is an insured party, a representative of that party's insurer with full,
2 complete, and unlimited authority to discuss and settle the case **SHALL** physically appear at
3 the aforesaid date and time. An uninsured or self-insured corporate party **SHALL** physically
4 appear at aforesaid Settlement Conference through its authorized representative with full,
5 complete, and unlimited authority to discuss and settle the case.¹

6 2. Experience also teaches that settlement conferences are often unproductive unless the
7 parties have exchanged demands and offers of compromise before the conference and have
8 made a serious effort to settle the case on their own. Accordingly, before arriving at the
9 Settlement Conference the parties are to negotiate and make a good faith effort to settle the case
10 without the involvement of the Court. The parties shall exchange written correspondence
11 regarding settlement. The Plaintiff's demand shall be delivered to defense counsel, the insurers'
12 and corporate representatives not less than **fifteen (15) days** before the Settlement Conference
13 Memoranda are due. Defendant's response to the demand shall be delivered to Plaintiff's
14 counsel not less than **seven (7) days** before the Settlement Conference Memoranda are due.

15 3. If a third person or corporate entity is involved, such as a worker's compensation
16 carrier or a health insurance carrier, who asserts a substantial lien on any settlement monies for
17 medical and hospital expenses and/or lost wages, arrangements shall be made to notify said
18 person or entity of the Settlement Conference. Plaintiff's counsel shall promptly provide a true
19 and complete copy of this Order to said person, entity or its authorized representative. *See,*
20 *A.R.S. § 23-1023(c); Stout v. State Compensation Fund*, 197 Ariz. 238, 3 P.3d 1158 (2000).

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24 ¹This requirement that a representative physically appear with full, complete, and unlimited authority is only
25 satisfied where the representative is the decision-maker with full authority to settle the matter: for a party asserting a claim,
26 this means full authority to stipulate to dismissal and release of all claims; for a party defending a claim, this means full
27 authority to satisfy the opposing party's existing settlement demand or offer. If it becomes apparent to the Court that a party
28 has not complied with this requirement, the Court will recess the settlement conference until such time that the noncomplying
party is in full compliance with this Order. The Court may further order the noncomplying party to show cause why it
should not pay the opposing party's reasonable attorney's fees and transportation costs incurred in attending the first
conference.

4. In the absence of a prior Order by the undersigned to the contrary, all Settlement Conference Memoranda are to be exchanged between counsel no later than **three (3) business days prior to the Settlement Conference**. Counsel and all individuals attending the Settlement Conference shall review all parties' memoranda and counsel shall explain the settlement conference procedures to their clients and representatives before the Settlement Conference.

Each party shall provide the Court with that party's Settlement Conference Memorandum, **at least three (3) business days before the Settlement Conference**. Said Memoranda may be transmitted by facsimile (602-322-7639) or by such other method of transmittal as will assure receipt by the undersigned by no later than the deadline prescribed in the preceding sentence. The Settlement Conference Memoranda shall **NOT** be filed with the Clerk. Each Memorandum shall address the following:

- a. A brief statement of the facts of the case.
- b. A brief statement of the claims or defenses as appropriate for the party, i.e., statutory or other grounds upon which the claims or defenses are founded, including the citation to appropriate authorities; a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses; and a description of the major issues in dispute.
- c. A summary of the proceedings to date including rulings on motions and motions outstanding, if any.
- d. An estimate of the costs and time to be expended for further discovery, pretrial litigation and trial, including past and future attorneys' and experts' fees.
- e. A brief statement of the facts and issues upon which the parties agree.
- f. Whether there is/are any distinct or dominant issue(s) which, if resolved, would likely aid in the disposition of the case.
- g. The relief sought.
- h. Each party's position on settlement, including present demands and offers and the history of past settlement discussions, offers and demands.

1 In the absence of any Order by the undersigned to the contrary, each party's Settlement
2 Conference Memorandum shall not exceed seventeen (17) pages exclusive of attachments and
3 shall otherwise comply with the Rules of Practice for the United States District Court for the
4 District of Arizona. *See*, LRCiv 7.2, 7.2(a) and 7.1(b)(1), Rules of Practice, District of Arizona.
5 No responsive memorandum shall be permitted.

6 5. If the Settlement Conference is held, the Court will assume that the parties have
7 agreed to separate meetings (caucuses) with the settlement judge. Ethical rules prohibit ex parte
8 caucuses without such agreement. By appearing at this conference, the Court will deem that
9 the parties have consented to this procedure and have waived any objection thereto unless a
10 written Objection is filed not less than three (3) business days before the Settlement Conference.

11 6. Absent good cause shown, if any party, counsel or representative fails to promptly
12 appear at the Settlement Conference, fails to comply with the terms of this Order, is
13 substantially unprepared to meaningfully participate in the Settlement Conference, or fails to
14 participate in good faith in the Settlement Conference, sanctions may be imposed pursuant to
15 Rules 16(f) and 37(b)(2)(D), Federal Rules of Civil Procedure, which may include an award of
16 reasonable attorney's fees and expenses and/or a finding of contempt. *See* 28 U.S.C. § 636(e).

17 7. Counsel and any party, if unrepresented by counsel, shall notify the Court in writing
18 at least ten (10) business days before the Settlement Conference if an attorney or unrepresented
19 party believes that the Settlement Conference would be a futile act resulting in an economic
20 waste because, for example, a party or insurer has adopted a position from which that party or
21 insurer refuses to deviate. The Court will then consider whether the Settlement Conference
22 would be helpful and, if not, whether the Settlement Conference should be canceled or whether
23 other forms of alternative dispute resolution should be considered. If there is disagreement
24 between or among the attorneys or unrepresented parties on this issue or any other issue, they
25 are instructed to arrange for a telephonic conference with the Court and all counsel as soon as
26 reasonably practical. If no such conference is arranged, it will be presumed that all counsel,
27 their clients and any unrepresented party believe that there is a reasonable, good faith
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1 opportunity for settlement, and that the involvement of a settlement judge is needed to
2 accomplish it.

3 DATED this 23rd day of June, 2006.

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David K. Duncan
United States Magistrate Judge